

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRECK SMITH,)	
)	
Petitioner,)	2:10-CV-01596-PMP-PAL
)	
vs.)	
)	ORDER VACATING DISMISSAL
ANTHONY SCILLIA, et al.,)	
)	
Respondents.)	

This is an action initiated by Breck Smith, a state prisoner, who has submitted a petition for writ of habeas corpus and an application to proceed *in forma pauperis*. Based on the financial information submitted with the latter submission, the application was denied and Smith was directed to pay the \$5 filing fee or renew his application for *in forma pauperis* status showing a change in his financial condition. Shortly after the court entered its order of dismissal, Smith's payment was received. Smith now moves the court to reconsider the dismissal. Good cause appearing, the motion shall be granted and the matter shall be reopened.

IT IS THEREFORE ORDERED that the Order dismissing the petition without prejudice (docket #5) is **VACATED** and the Judgment **RECALLED**. The Clerk shall reopen the docket.

IT IS FURTHER ORDERED that the clerk shall **file** the petition for writ of habeas corpus (docket #1-1) and shall **ELECTRONICALLY SERVE** the petition (docket #1) upon the respondents.

IT IS FURTHER ORDERED that respondents shall have **forty-five (45)** days from entry of this order within which to answer, or otherwise respond to, the petition. In their answer or other response, respondents shall address any claims presented by petitioner in his petition as well as any claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise all potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and

1 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,
2 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
3 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have **forty-**
4 **five (45) days** from the date of service of the answer to file a reply.

5 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney General
6 of the State of Nevada a copy of every pleading, motion, or other document he submits for consideration
7 by the Court. Petitioner shall include with the original paper submitted for filing a certificate stating
8 the date that a true and correct copy of the document was mailed to the Attorney General. The Court
9 may disregard any paper that does not include a certificate of service. After respondents appear in this
10 action, petitioner shall make such service upon the particular Deputy Attorney General assigned to the
11 case.

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13 DATED: December 9, 2010.

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16 PHILIP M. PRO
United States District Judge